

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION TWO

In re SERENITY Y., a Person Coming  
Under the Juvenile Court Law.

CONTRA COSTA COUNTY CHILDREN  
AND FAMILY SERVICES BUREAU,

Plaintiff and Respondent,

v.

J.L.,

Defendant and Appellant.

A141456

(Contra Costa County  
Super. Ct. No. J13-01279)

J.L., mother of nine-year-old Serenity Y., appeals from the juvenile court's orders declaring Serenity a dependent of the juvenile court, pursuant to Welfare and Institutions Code section 300, subdivision (b),<sup>1</sup> and removing her from her mother's custody, pursuant to 361, subdivision (c)(1). Mother contends substantial evidence does not support either the court's jurisdictional findings or Serenity's removal from her custody. We shall affirm the juvenile court's orders.

---

<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

## **FACTUAL AND PROCEDURAL BACKGROUND**

In a detention/jurisdiction report, prepared on November 27, 2013, a social worker with the Contra Costa County Children and Family Services Bureau (Bureau) described the circumstances leading to the filing of a petition on that same date, alleging that Serenity came under section 300, subdivision (b).

First, the social worker reported that there was already an open investigation regarding a prior referral on April 12, 2013 related to a domestic violence incident between mother and her live-in boyfriend and a break-in to mother's home by family and friends of the boyfriend, during which she was beaten and Serenity was locked in a room. Serenity also had reported that she and mother had slept in the car the previous night. The report also contained statements from Serenity, made during a November 8, 2013 interview with the social worker, in which she acknowledged that mother's boyfriend had hit mother. Once, Serenity came home and there was blood in the house. She said mother was no longer seeing the boyfriend. Serenity also "confirmed that she did sleep in a car because her mother did not want to go inside because she was afraid of the dark." When the social worker asked if she did not want to live her father because she felt as though she had to protect her mother and keep her safe, Serenity responded in the affirmative, and said that she is very strong. When asked if she had someone to talk to on a regular basis, Serenity said she could go to her "dad, stepmom and her teacher."

Serenity's father had told a social worker in October 2013, that, pursuant to a custody order, he had Serenity with him on Tuesdays, Thursdays, and every other weekend. He and his girlfriend, who had been living in their current home for over a year, had talked about going back to court to get Serenity to live with them because they believed that would provide Serenity with greater stability. Father said mother and Serenity were " 'always house-hopping,' " and expressed concern that mother " 'caught a drug case recently.' " He also mentioned a domestic violence incident between mother and her former boyfriend, which Serenity witnessed.

Then, according to the Bureau, on November 18, 2013, mother was arrested at her home for obstruction/resisting arrest, as well as for being under the influence of

methamphetamine and possessing drug paraphernalia. Mother had assaulted a police officer who had come to the home to investigate Serenity's welfare. Several hypodermic needles were located in mother's purse and in two rooms of the home. At the police station, an officer conducted a drug abuse recognition (DAR) and papillary examination on mother. Based on the examination and mother's objective symptoms, it was concluded that mother was under the influence of a controlled substance. Mother's friend Dana told the emergency response worker that Serenity was at school at the time and that Serenity had been staying with her "on and off" so that mother could clean the house before selling it.

An excerpt from the arresting officer's report, which was included in the Bureau's report, described arriving at the house to do a welfare check on Serenity and seeing mother showing symptoms of being under the influence of a controlled substance, including abnormally constricted pupils, chapped lips, a white film coating her inner mouth, and fidgety behavior. Mother became very loud, agitated, and uncooperative. The officer noticed several hypodermic needles on the floor of the master bedroom and, on top of a tall dresser in another bedroom, he found a glass pipe and 11 hypodermic needles, including two with a liquid in them.<sup>2</sup> Inside mother's purse, he found two more hypodermic needles and a glass pipe. While conducting a security sweep of the residence, the officer noticed that the house was dark and messy, with debris, clothes, and tools scattered through the rooms and on floors. He also located an adult male who appeared nervous sitting on a toilet in a bathroom.

An emergency response worker contacted Serenity's school, and learned that she had been absent or tardy 31 times that school year. She was often dropped off and picked up from school by someone other than mother or father.

The emergency response worker spoke with mother by telephone on November 21, 2013. Mother denied that she had been using methamphetamine at the time of her

---

<sup>2</sup> One of the hypodermic needles with liquid inside later tested positive for methamphetamine.

arrest and claimed that the police officer had assaulted her. She said the hypodermic needles the officer found were not hers.

On November 25, 2013, the emergency response worker met separately with Serenity and mother. Serenity said that she had been staying often with mother's friend Dana. She replied, "no" when asked if she knew what drugs were or if she had even seen any needles in mother's home. She said that when mother's friends came to mother's house, they shut the door to mother's room so they could talk privately. She said the friends did not make her feel uncomfortable "because they are really nice." She said she thought her mother and her mother's friends kept her home from school at times "[p]robably because they were scared that you guys were going to come and take me away." In addition, when she came home from school, mother was sometimes asleep because she was tired from working on the house. On those occasions, Serenity would play in her room. Once, she heard mother up all night working on the house. Serenity also told the worker that she had not seen a doctor since she was six years old. In addition, "she was supposed to go back to the dentist but she never came back."

Mother told the emergency response worker that she did not want Serenity in a foster home and that she could go and live with father and his girlfriend because they "are stable and his girlfriend is a good influence on Serenity." Mother acknowledged having engaged in domestic violence in the past and said she needed help with that issue. But she denied needing help with substance abuse and claimed she was not using methamphetamine. She denied that the hypodermic needles found in her purse and the bedrooms of her home were hers.

During a November 26, 2013 meeting with Bureau staff, father, and his fiancée Diana, mother admitted to using methamphetamine and marijuana during high school. She also admitted that she was arrested for possession of a controlled substance in May 2013, but said that the charges were later dropped. She continued to deny current methamphetamine use. Father admitted that he had used marijuana, alcohol, and methamphetamine off and on until Serenity was five years old. He had had three DUI arrests, most recently in June 2011, and was currently on probation. Diana said that

father had “come a long way”; he was no longer using drugs and had significantly reduced his use of alcohol. Diana believed mother had “spiraled out of control” since her mother had passed away the year before.

At the end of the report, the emergency response worker recommended that a petition be filed and that Serenity remain in the care of father, who was to participate in random drug testing, outpatient substance abuse treatment, Alcoholics Anonymous meetings and sponsorship, and parenting education. She recommended that mother participate in a substance abuse assessment, residential treatment, domestic violence treatment and education, parenting education, and counseling services to deal with her grief over the death of her mother. The worker concluded that “the parents love the child and the child appears to have a good relationship with her parents and father’s girlfriend (who the child identifies as her stepmother).” Serenity was assessed to be currently safe in the care of father, with whom she had been placed after removal from mother.<sup>3</sup> The emergency response worker also stated that “mother has presented with a level of denial about the impact of illegal substances in her life,” but she had acknowledged that she needed to address issues of domestic violence, and was agreeable to participating in all recommended services.

At the end of the December 2, 2013 detention hearing, which mother did not attend, the court detained Serenity and authorized the Bureau to release her temporarily to the custody of father.

At the December 18, 2013 initial hearing on jurisdiction, mother refused the request of counsel for the Bureau and counsel for Serenity to take a drug test. The court also granted mother a minimum of one hour of weekly visitation.

---

<sup>3</sup> The emergency response worker reported that father was Serenity’s presumed father. He was listed on her birth certificate, held her out as his own, and had provided support for her. There was also a family law case with custody orders regarding Serenity. Father had a past history of alcohol abuse, but was in compliance with court probation. He had a stable home and the support of his girlfriend, with whom Serenity had a relationship.

At the continued jurisdiction hearing on January 22, 2014, two social workers who had investigated the referral for domestic violence that was filed in April 2013, testified that Serenity had said mother was no longer in a relationship with her boyfriend. There was no evidence of any other incidents of domestic violence since then. Mother also testified at that hearing, although the court subsequently struck her testimony when she did not appear at the next hearing for further cross-examination.

At the continued jurisdiction hearing, on January 27, 2014, James Bedgood, one of the police officers who went to mother's house on November 18, 2013, to perform a welfare check on Serenity testified, consistent with his police report, about his DAR examination of mother, his conclusion that she was under the influence of a controlled substance, and his discovery of methamphetamine and drug paraphernalia in her house. Mother refused to take either a Romberg test or a blood test to determine whether she was under the influence. She was arrested for resisting a police officer in the course of an investigation after she punched Bedgood and elbowed him in the shoulder. It took two officers to restrain her. Mother told Bedgood that both she and Serenity had been living at the house, but were moving out.

At the conclusion of the jurisdiction hearing, the juvenile court sustained the substance abuse allegation in the petition. It found, in light of the arresting officer's background as a paramedic, that he was "uniquely qualified" to observe mother and opine as to her state of sobriety, and also noted that mother's erratic and aggressive behavior, as well as the pipe, methamphetamine, and hypodermic needles found in the house and in mother's purse supported a finding that she was under the influence and in possession of methamphetamine and related paraphernalia. The court also found that Serenity's chronic absenteeism from and tardiness to school was attributable to mother's out of control behavior due to her substance abuse. The court concluded that mother's conduct placed Serenity at substantial risk of harm and that the risk "will continue until mother acknowledges and comes to grips with the depths of her substance abuse issues." The court found, however, that there was no evidence of continuing domestic violence and, therefore, dismissed the domestic violence allegation.

In a March 3, 2014 disposition report, the social worker reported that Serenity was clearly comfortable at father's house. Father and his fiancée Diana were "happy" to take over fulltime care and supervision of Serenity, and mother agreed that it was best for Serenity to presently live with father. Serenity had her own bedroom at father's home and Diana, who Serenity called "mom," was very involved in her care. Serenity's teacher had observed that her school attendance had improved, as had her progress. The teacher described her as "a very sweet child who wants to do well in school." The social worker also reported that "Serenity presents as a friendly, happy, and gentle child," and had not shown symptoms of emotional, behavioral, or psychological maladjustment.

Mother had not seen Serenity since late December 2013. She had agreed to participate in random drug testing, a substance abuse assessment, parenting classes, and a domestic violence program in November 2013. However, she had not yet participated in any of these services.

The Bureau recommended that Serenity remain placed with father, that father be offered family maintenance services and that mother be offered reunification services.

In a memorandum prepared on March 11, 2014, the social worker informed the juvenile court that father had tested positive for alcohol on February 28. He failed to show up for his next test, on March 8. He had been tested again on March 10, but those results were not yet available.

Mother and father both appeared at the contested disposition hearing on March 12, 2014. Counsel for the Bureau informed the juvenile court that the Bureau intended to file a subsequent petition the following day, asking the court to detain Serenity from father. Father's counsel told the court that father was willing to leave the home immediately, if Serenity could remain in the care of his fiancée, Diana. Father was actively looking for a residential treatment program in which he could enroll to address his alcohol issues. Mother's counsel told the court that mother wanted to ensure that Serenity stayed with Diana because she felt that "Serenity is doing incredibly well where she is and she doesn't want to see her disrupted." The court ordered father out of the home immediately, and allowed Serenity to stay in the home overnight with Diana, pending the

filing of the subsequent petition. The disposition hearing was postponed and the matter was continued until the next day to address the subsequent petition.

At the detention hearing the next day, March 13, 2014, father entered a no contest plea to the newly filed subsequent petition, which alleged that Serenity was at risk of harm due to father's substance abuse. (See §§ 300, subd. (b) & 342.) The court sustained the petition, detained Serenity from father, but permitted her to remain in father's home with Diana. The court ordered a minimum of one-hour weekly visitation for father.

In a memorandum prepared on March 19, 2014, the social worker reported that mother still had not visited with Serenity. Mother had sent several emails to the social worker, in which she demanded to record all visits between her and Serenity to protect herself and Serenity from lies by the Bureau. She also claimed that the police had attacked and choked her at the time of her arrest and that there was a conspiracy to violate her rights. The Bureau now recommended that reunification services be provided to both parents.

At the March 20, 2014 disposition hearing, father submitted on the Bureau's recommendations. The parties stipulated that mother, if called to testify, would testify that her current living situation was stable, she did not have a drug abuse issue, and she would be willing to ensure Serenity's regular attendance at school and doctor's appointments if Serenity were returned to her care. The court accepted the offer of proof regarding the stipulated testimony.

At the conclusion of the hearing, the court found that "mother is highly unstable" and "presents a very significant and substantial danger to this child." The court adopted the Bureau's recommendation that reunification services be provided to the parents,<sup>4</sup> and also ordered supervised visitation for both parents.

---

<sup>4</sup> Services for mother were to include general counseling and parenting education, as well as participation in an outpatient substance abuse program, a 12-step program, and substance abuse testing.



On March 28, 2014, mother filed a notice of appeal, challenging the juvenile court's jurisdictional and dispositional orders.

## **DISCUSSION**

### ***I. Jurisdictional Findings and Orders***

Mother contends the jurisdictional findings and orders must be reversed because they were not supported by substantial evidence that Serenity was at substantial risk of harm.

Section 300 provides, in relevant part: “Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] . . . [¶] (b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, . . . or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. ”

“In a challenge to the sufficiency of the evidence to support a jurisdictional finding, the issue is whether there is evidence, contradicted or uncontradicted, to support the finding. In making that determination, the reviewing court reviews the record in the light most favorable to the challenged order, resolving conflicts in the evidence in favor of that order, and giving the evidence reasonable inferences.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450-451 (*Alexis E.*))

Here, according to mother, there is no evidence in the record showing either that she actually abused drugs at the time of the jurisdictional hearing or that Serenity had been harmed or was at substantial risk of harm due to her alleged drug use. We disagree.

The record reflects that mother had been arrested for (1) physically assaulting a police officer who came to her home to perform a welfare check on Serenity, and (2) being under the influence of methamphetamine and possessing drug paraphernalia after the officer determined that she was under the influence of methamphetamine and that

there was methamphetamine and drug paraphernalia, including multiple hypodermic needles, in her purse and the bedrooms of her home. The arresting officer, whom the court found to be highly qualified to opine on mother's state of sobriety, further testified that there were debris and other items scattered throughout mother's home.<sup>5</sup>

Additional evidence of mother's substance abuse, erratic behavior, and the risk to Serenity included Serenity's comments to the emergency response worker that, when mother's friends came over, they went into mother's room and shut the door; that mother was sometimes asleep when Serenity came home from school; and that she had heard mother staying up all night. Serenity also told the worker that she and mother slept in a car because mother did not want to go inside the house due to her fear of the dark. Although Serenity told the worker that she did not know what drugs were and had not seen any needles in the home, the evidence of mother's drug use and conduct supports the juvenile court's findings regarding mother's ongoing substance abuse and the danger to Serenity. In addition, Diana had expressed concern that mother had "spiraled out of control" since her mother had passed away the year before. Mother's angry, confrontational, and paranoid interactions with the Bureau also provide evidence supporting the juvenile court's findings. (See *Alexis E.*, *supra*, 171 Cal.App.4th at p. 453 [evidence that father's use of marijuana had "a negative effect on his demeanor towards the children and others," as well as his hysteria, yelling, and use of profanity in a phone conversation with social worker, provided substantial evidence of a risk of harm to children].)

In addition, the court's finding that mother's denial regarding her drug use undermined her ability to deal with the problem and placed Serenity at substantial risk of future harm was supported by substantial evidence. The court reasonably found that

---

<sup>5</sup> Just because Serenity was not at home at the time of the police incident does not negate the ongoing danger of harm due to mother's behavior and drug use. While there was evidence that Serenity stayed at times with mother's friend, Dana, that evidence does not support mother's unsupported statement that Serenity was no longer living at the home.

mother's denial of having used methamphetamine since high school, even though she admitted being arrested for possession of a controlled substance in May 2013, and despite the evidence of current use, was not credible. Mother's refusal to drug test further supported the court's findings. As the court concluded, mother's conduct placed Serenity at substantial risk of harm and that the risk "will continue until mother acknowledges and comes to grips with the depths of her substance abuse issues."

Likewise, the court's finding that Serenity was chronically absent from or late to school due to mother's out of control behavior because of her substance abuse is supported by substantial evidence. Mother cites *In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003, in which there was no evidence that the child's being tardy to school during the previous school year was related to the mother's drug use or that the past tardiness created a substantial risk of serious harm to the child. Moreover, Child Protective Services in *Destiny S.* attempted to rely on evidence of mother's problematic conduct *from nine years earlier* to show a current danger to her child. The evidence in fact showed that, currently, the home was neat and clean; no drug paraphernalia was observed in the home; at the time of the jurisdictional hearing, the mother had tested clean for marijuana and methamphetamine for three months; and the child was regularly attending school. (*Id.* at p. 1004.) The appellate court therefore found that evidence that mother's use of marijuana or other drugs put the child at substantial risk of future harm was purely speculative. (*Ibid.*) Here, on the other hand, the evidence showed that Serenity was frequently absent from or tardy to school during the *current* school year and, as previously discussed, other evidence of the risk of harm to Serenity from mother's drug use existed.

Mother also relies generally on *In re Drake M.* (2012) 211 Cal.App.4th 754, 764, in which the appellate court stated that, "without more, the mere usage of drugs by a parent is not a sufficient basis on which dependency jurisdiction can be found. [Citations.]" Instead, the court explained, "[t]he trial court is in the best position to determine the degree to which a child is at risk based on an assessment of all the relevant factors in each case." (*Id.* at p. 766.) In that case, the court found that Child Protective

Services had failed to show that the father’s use of medical marijuana, to which the child was not exposed, undermined his ability to adequately supervise and protect the child. (*Id.* at pp. 768-769; see also *In re David M.* (2005) 134 Cal.App.4th 822, 830 [risk of harm was speculative where uncontradicted evidence showed that child was healthy and well cared for, parents were raising him in a clean and tidy home, and mother—who suffered from a substance abuse problem—had tested negative for drugs approximately 18 times in the four and one-half months between detention hearing and jurisdiction hearing].)

As detailed above, unlike in *In re Drake M.* and *In re David M.*, here, there is substantial evidence supporting the juvenile court’s finding that there was a substantial risk that Serenity would suffer serious physical harm as a result of mother’s drug use, which undermined her ability to supervise, protect, or care for Serenity. (See § 300, subd. (b).)

The juvenile court’s jurisdictional findings and orders are supported by substantial evidence. (See *Alexis E.*, *supra*, 171 Cal.App.4th at pp. 450-451.)

## **II. Dispositional Order of Removal**

Mother contends the juvenile court’s order removing Serenity from her custody is not supported by substantial evidence.

Section 361, subdivision (c), provides in relevant part: “A dependent child may not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds by clear and convincing evidence . . . [¶] (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s . . . physical custody.”

In addressing mother’s claim, we review the record in the light most favorable to the juvenile court’s dispositional order “to determine whether it contains sufficient evidence from which a reasonable trier of fact could make the necessary findings by clear

and convincing evidence.” (*In re Mariah T.* (2008) 159 Cal.App.4th 428, 441.) “ ‘Clear and convincing evidence requires a high probability, such that the evidence is so clear as to leave no substantial doubt.’ [Citation.] [¶] At the same time, jurisdictional findings are prima facie evidence the child cannot safely remain in the home. (§ 361, subd. (c)(1).) The parent need not be dangerous and the child need not have been actually harmed before removal is appropriate. [Citations.]” (*In re Hailey T.* (2012) 212 Cal.App.4th 139, 146 (*Hailey T.*).

We conclude the record in this case contains substantial evidence in support of the juvenile court’s dispositional orders. The court plainly did not find credible mother’s stipulated testimony that her living situation was stable, that she had no substance abuse issue, and that she would ensure that Serenity regularly attended school and doctor appointments. In fact, the evidence showed that, by the time of the dispositional hearing, little had changed since the jurisdictional hearing, other than the fact that father’s current substance abuse had come to light. (See *Hailey T., supra*, 212 Cal.App.4th at p. 146.) Mother had not visited with Serenity for almost three months due to her disagreement with the requirement that visits be supervised. Four months after she was found in her home under the influence of methamphetamine and in possession of drug paraphernalia, she continued to deny a substance abuse problem and still had not submitted to a drug test. In addition, she had expressed hostility and paranoia toward the Bureau and had argued with the court over drug testing and visitation. In light of this evidence, the court reasonably found that mother was “highly unstable.” (Compare *Hailey T.*, at pp. 147-148.)

Mother relies on *Hailey T., supra*, 212 Cal.App.4th at pages 147-148, in which the appellate court held that the juvenile court’s dispositional order removing a child from her parent’s home was not supported by substantial evidence because the juvenile court did not adequately consider all possible alternatives to removal. According to mother, the juvenile court in the present case also should have explored alternatives to ordering Serenity removed from mother’s home. The circumstances in *Hailey T.*, however, differ markedly from those in this case. For example, although the child’s infant brother had

suffered unexplained and apparently non-accidental injuries, there was no evidence that the child had been abused or had suffered harm as a result of her brother's abuse. (*Id.* at p. 147.) Moreover, there was "abundant evidence" that the parents were "good parents who enjoyed a healthy relationship." (*Ibid.*) In these circumstances, the appellate court concluded that the evidence did not support the juvenile court's conclusion that no less drastic alternatives existed to the child's removal, "under stringent conditions of supervision by the agency such as unannounced visits." (*Id.* at p. 148.)

Here, unlike in *Hailey T.*—in which there was no evidence of a substantial danger to the child and alternatives to removal were available—there *was* substantial evidence supporting the juvenile court's finding that Serenity could not safely be returned to her mother's home. In addition, contrary to mother's claim that, *inter alia*, "[a] safety plan could be initiated while mother completed services including random drug testing," mother had refused to drug test, had not begun participating in services, and had failed to cooperate with the Bureau in any way. In these circumstances, the court did not err by failing to explicitly explore alternatives to removal at the conclusion of the dispositional hearing. (Compare *Hailey T.*, *supra*, 212 Cal.App.4th at pp. 147-148.)<sup>6</sup>

In conclusion, given the evidence of mother's ongoing volatility and erratic behavior, together with her denial of a substance abuse problem, the juvenile court reasonably concluded that she presented "a very significant and substantial danger to this child." Accordingly, substantial evidence supports the court's findings, by clear and convincing evidence, that "there [was] a substantial danger to the physical health, safety, protection, or physical or emotional well-being of [Serenity if she] were returned home, and there [were] no reasonable means by which [Serenity's] physical health [could] be protected without removing [her from mother's] . . . physical custody." (§ 361, subd. (c)(1).)

---

<sup>6</sup> At the March 12, 2014 disposition hearing, mother herself expressed the desire that Serenity remain at father's home with father's fiancée Diana, because Serenity was "doing incredibly well" there and mother did not "want to see her disrupted."

**DISPOSITION**

The juvenile court's jurisdictional and dispositional orders are affirmed.

---

Kline, P.J.

We concur:

---

Richman, J.

---

Miller, J.